

**Kansas Division of Workers Compensation
Fraud and Abuse Unit
Annual Report
FY2002**



**Phil Harness, Acting Director
Ezra Ginzburg, Assistant Attorney General**

**Division of Workers Compensation
Kansas Department of Human Resources
800 SW Jackson
Topeka, KS 66612-1227
wcfraud@hr.state.ks.us
(785) 296-6392 800-332-0353**

Introduction

The Workers Compensation Fraud & Abuse Investigation Unit was established in 1994. Staffing for the Unit comprises an Assistant Attorney General, who acts as the Unit's manager, three investigators and one clerical person. The Unit's responsibilities includes identifying potential fraud & abuse by investigating allegations of wrongdoing that are referred to the Unit and taking legal action when evidence gathered in the investigations indicates possible wrongdoing. In addition, the Unit sanctions employers who fail to file accident reports as required by K.S.A. 44-557. The Unit is dedicated to the investigation and prosecution of suspected workers compensation fraud, however the Unit also has directed its attention to the education of the public and the insurance industry. Also the Unit has filed cases against employers who have failed to file accident reports as required by K.S.A. 44-557.

Fraud in the workers compensation system may occur at any level involving employees, employers, insurance carriers, self-insured entities, attorneys, physicians and others who attempt to obtain or deny workers compensation benefits in a fraudulent manner. K.S.A. 44-5,120 lists 21 acts that constitute fraud and or abuse of the workers compensation system. K.S.A. 44-5,125 makes some acts a felony crime. The Fraud & Abuse Unit of the Division of Workers Compensation set a record this past fiscal year, as the data in this section will evidence. All information reported hereafter reflects activity during fiscal year 2002 (July 1, 2001 through June 30, 2002).

- This year the Fraud and Abuse Unit set a new record and collected the most in restitution and civil penalties ever, \$89,550.12 for fiscal year 2002. The Fraud and Abuse Unit has stepped up prosecution of workers compensation fraud violators. Not only is prosecution up, but enforcement of the judgment i.e. collection of fines, penalties and restitution has significantly increased.
- During the fiscal year 2002, the Fraud and Abuse Unit performed 213 investigations of those individuals, self-insured entities and employers who were alleged to have violated the Kansas Workers Compensation act. The Unit has provided Kansans with an aggressive program to fight fraud in the workers compensation system. Also in fiscal year 2002, the Unit pursued employers who failed to file accident reports as required by K.S.A. 44-557.

The Unit performs a vital service in helping reduce and punish workers compensation fraud violators and insures compliance with other relevant workers compensation laws in Kansas. However, this is not enough. The direct involvement of all Kansans is required to send the message that fraud will not be tolerated in Kansas.

Table 4-1

| Overview of Fraud & Abuse Unit Activity | |
|--|-------------|
| Civil Cases Filed | 42 |
| Criminal Cases Filed | 3 |
| Total Cases Filed | 45 |
| Moneys Collected | \$89,550.12 |

Source: Kansas Division of Workers Compensation

Referrals

Information Received by the Unit

The Fraud & Abuse Unit receives information on alleged fraud and other violations of the workers compensation laws by phone, fax, e-mail, regular mail or a submission from one of the other sections of the Division of Workers Compensation. Allegations of fraud & abuse are designated as a referral. This referral is reviewed by the Assistant Attorney General to determine if sufficient information is evident to warrant an investigation. If there is sufficient information, the case is given to an investigator for investigation. If insufficient information exists, the matter is either returned to the complaining party for further information or if that is not possible, then the referral is recorded but no investigation commences.

Reporting Fraud, Abuse or Lack of Compliance

Table 4-2 below indicates who reports allegations of fraud, abuse and lack of compliance to the Unit. As noted, reports come in from all persons within the workers compensation system.

Table 4-2
Who is Reporting Fraud, Abuse & Lack of Compliance

| Fraud Reporting | Total |
|--|--------------|
| Persons Claiming Benefits | 16 |
| Employers Subject to Workers Compensation Requirements | 5 |
| Insurance Companies | 46 |
| Renderers of Medical Care & Physicians | 4 |
| Attorneys | 23 |
| Anonymous & Others | 60 |
| In-House | 54 |
| Self-insured employers | 5 |

Source: Kansas Division of Workers Compensation

Referrals by Location

The Fraud & Abuse Unit records the location of the referrals by the county in which the fraud allegedly occurred. Table 4-3 lists the number of referrals received from each county.

- Of the 213 referrals, 22 came from Sedgwick County, 19 from Wyandotte County, 62 from Johnson County and 27 from Shawnee County.

Table 4-3
Referrals by County

| | |
|--------------------|-----|
| Johnson | 62 |
| Shawnee | 27 |
| Sedgwick | 22 |
| Wyandotte | 19 |
| Reno | 6 |
| Douglas | 5 |
| Riley | 4 |
| Saline | 4 |
| Bourbon | 3 |
| Cowley | 3 |
| All Other Counties | 58 |
| Total Referrals | 213 |

Source: Kansas Division of Workers Compensation

Types of Fraud

The Unit classifies the type of fraud reported as it relates to the fraud & abuse statutes as well as the compliance statutes. Table 4-4 lists the types of fraud, abuse and lack of compliance cases reported to the Unit over the past year.

Table 4-4
NUMBER OF FRAUD, ABUSE & COMPLIANCE CASES REPORTED

| Type of Fraud, Abuse & Compliance Referrals | Total |
|--|--------------|
| Obtaining or denying benefits by making false statements either orally or written, K.S.A. 44-5, 120 (D)(4). | 67 |
| Misrepresenting provisions of the Act to an employee, employer, or medical provider, K.S.A. 44-5, 120 (D)(11). | 1 |
| Failure to confirm benefits to anyone providing treatment to a claimant, K.S.A. 44-5, 120 (D)(15). | 4 |
| Refusing or failing to make prompt delivery to employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement agreement, order or reward, K.S.A. 44-5, 120 (D)(10). | 2 |
| Failure to initiate or reinstate compensation when due, K.S.A. 44-5, 120 (D)(16). | 3 |
| Misrepresenting the reason for changing compensation, K.S.A. 44-5, 120 (D)(17). | 3 |
| Refusing to pay compensation as and when due, K.S.A. 44-5, 120 (D)(18). | 10 |
| Refusing to pay any order awarding compensation, K.S.A. 44-5, 120 (D)(19). | 12 |
| Failing to timely file accident reports, K.S.A. 44-557. | 17 |
| Receiving TTD or PTD benefits while working, K.S.A. 44-5, 125 (D). | 18 |
| Failure to maintain workers compensation insurance when required, K.S.A. 44-532 (d). | 67 |
| All other Fraud and Abusive Practices. | 9 |

Source: Kansas Division of Workers Compensation

Type of Alleged Violators

Of the 213 referrals for the year, claimants were indicated in 49, employers 70, insurance entities 1, self-insured employers 10, renderers of medical care, attorneys and all others 83.

Investigations

The Fraud Unit has three full time investigators. These investigators are not law enforcement officers, however, they perform almost identical investigative duties as sworn law enforcement. The investigation process includes activities such as interviewing witnesses, collecting evidence, forming liaisons with law enforcement groups as well as special fraud investigation units within the insurance industry and testifying in administrative and criminal actions.

Once an investigation is complete, the investigator will prepare an investigative summary for the Assistant Attorney General to review. Criminal or administrative action commences if the Assistant Attorney General determines there is sufficient information to sustain the burden of proof in either a criminal or administrative action.

If the information indicates an insurance company as the alleged fraud violator, that information is referred to the Kansas Insurance Department for review. Per Kansas's law, the Kansas Insurance Department has authority to bring a fraud and/or abusive practice violation against insurance companies.

- Of the 213 referrals, some are referred to the Kansas Insurance Department for investigation or the Immigration and Naturalization Service or other authorities depending on the alleged violation involved.

If the information developed is insufficient to sustain the burden of proof in any action, the case is closed with no further action to be taken.

- The average time for an investigation was 78 days. The Assistant Attorney General made a decision to prosecute, refer or close the file within an average of 18 days.

Prosecution

The Unit is authorized to initiate criminal or administrative action against individuals and entities that appear to have committed fraud or abuse of the workers compensation system. The Unit has been extremely aggressive in this area. Civil actions are broken out into compliance and fraud actions.

- 3 felony criminal cases were filed in Johnson, Seward Counties, and Wyandotte in fiscal year 2002.

**Table 4-5
Number of Cases**

| | |
|-----------------|----|
| Civil | 42 |
| Fraud/Abuse | 20 |
| Compliance | |
| K.S.A. 44-532 | 21 |
| K.S.A. 44-557 | 1 |
| Criminal | 3 |
| Total | 45 |

Source: Kansas Division of Workers Compensation

Collections

This year the Unit has devoted serious effort to collection of fines, penalties and restitution. During either a criminal or administrative action, a penalty, fine, or restitution is requested but not necessarily ordered by the judge or hearing officer. The total amount collected for FY2002 was \$89,550.12. The Unit makes every attempt to collect the funds due and owed to the Unit without any assistance. However in some instances the Legal Services Division of the Kansas Department of Human Resources is used to file collection action. Once the money is received, by law it must be deposited in the appropriate fund. Figure 4-6 shows the breakdown of which fund receives the money collected. Restitution is money that is returned to the victim of the fraud.

**Figure 4-6
Fraud, Abuse & Compliance Collections**

| | |
|----------------------------------|-------------|
| Fee Fund | \$21,990.89 |
| K.S.A. 44-5, 120; 44-557 | |
| Workers Compensation Fund | \$53,672.21 |
| K.S.A. 44-532 | |
| Restitution | \$13,887.02 |
| K.S.A. 44-5, 120 & 44-5, 125 | |
| Total | \$89,550.12 |

Source: Kansas Division of Workers Compensation

Conclusion

The Division of Workers Compensation Fraud & Abuse Unit is and will continue aggressively investigating and prosecuting workers compensation violators. If you wish to report an employer failing to comply with the Workers Compensation Act, fraud or just have questions for the Unit, please do not hesitate to contact the Division. Finally, special thanks to David Sprick, Judy Hanna, Georgia Rogers and Andrew Bell, all of the Division, for their work on gathering & reporting the Unit's statistics.